

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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	:
In re:	: Chapter 11
	:
EAST 44 <sup>TH</sup> REALTY, LLC,	: Case No. 05-16167 (RDD)
	:
Debtor.	:
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G SQUARED ASSOCIATES LLC,	:
G SQUARED MANAGEMENT LLC,	:
ALLEN GUTTERMAN, and	:
MARK GUTTERMAN,	: Docket No.: 07 CV
	:
Appellants	:
	:
- against -	:
	:
DAVID R. KITTAY, as Chapter 11 Trustee	:
of East 44 <sup>th</sup> Realty, LLC	:
	:
Appellee.	:
-----X	

**APPELLEE, DAVID R. KITTAY'S, DESIGNATION OF ADDITIONAL  
ITEMS TO BE INCLUDED IN THE CONTENTS OF THE  
RECORD ON APPEAL AND CROSS-APPELLANT DAVID R. KITTAY'S STATEMENT OF  
ISSUES ON CROSS-APPEAL**

Appellee, David R. Kittay, Chapter 11 Trustee for the estate of East 44<sup>th</sup> Realty, LLC, by his attorneys, Kittay & Gershfeld, P.C., designates, pursuant to Federal Rule of Bankruptcy Procedure 8006, the following additional items to be included in the Record on Appeal:

<b>Item No.</b>	<b>Docket No.</b>	<b>Description</b>
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1

Not Yet Docketed

Transcript of Hearing Held  
on September 12, 2007 on  
Trustee's Motion for an  
Order in Accordance with  
Court's August 9, 2007 Order  
Authorizing Release of  
Escrowed Funds

Cross-Appellant, David R. Kittay, Chapter 11 Trustee for the estate of East 44<sup>th</sup> Realty, LLC, by his attorneys, Kittay & Gershfeld, P.C., counter-designates, pursuant to Federal Rule of Bankruptcy Procedure 8006, the following issues to be presented to the Court:

1. Did the Bankruptcy Court err in holding that the Trustee was entitled to retain the \$1.67 million downpayment paid to the estate of East 44<sup>th</sup> Realty, LLC by G Squared Associates LLC ("G Associates") and G Squared Management LLC ("G Management"; G Associates and G Management are collectively referred to as "G Squared") in accordance with the explicit language of the contract G Squared executed with the Trustee when the Bankruptcy Court:
  - (a) offered the parties an opportunity to present and cross-examine live witnesses and G Squared declined such opportunity;
  - (b) found that notice of the Trustee's intent to close had been properly given in accordance with the terms of the parties' contract as such information had been provided to the Trustee by G Squared's counsel;
  - (c) provided the parties with a detailed analysis of why, after applying the "equitable gloss" analysis referenced by Southern District Court Judge Scheindlin in her *In re Target Two Associates, L.P.* decision at 2005 WL 1140538 (May 16 2005), the entire amount of the escrowed monies should be retained by the Trustee for the benefit Debtor's estate;
  - (d) explained its decisions for finding that the Trustee's decision not to grant an adjournment of the time for G Squared to close was reasonable given G Squared's acknowledged default and the risk of losing the stalking horse bidder;
  - (e) did not grant the Debtor's estate a windfall or effect an unwarranted forfeiture given the accruing costs to the estate and the potential risks to the estate of not moving forward with the stalking horse bidder;
  - (f) found it reasonable and not extraordinary for the Trustee to conclude he

did not want to continue negotiating with G Squared without the Court's reviewing the substance of the failed negotiations; and

(g) found that: (i) an immediate closing was always contemplated by the parties as set forth in the contract; (ii) the Trustee's conduct did nothing to indicate to G Squared that he intended to alter that obligation; (iii) the Trustee's intent to close immediately was highlighted by the fact that paragraph 30 of the order approving the sale to G Squared waived the stay provisions of Federal Rule of Bankruptcy Procedure 6004; and (iv) the Trustee could not be held "hostage" by G Squared's failure to order a title report.

Dated: Tarrytown, New York  
October 9, 2007

KITTAY & GERSHFELD, P.C.  
Attorneys for the Trustee

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